IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Bail Appl..No. 6154 of 2007()

[CRIME NO.529/2007 OF THALIPARAMBA POLICE STATION]

: PETITIONER/ACCUSED NO.1

K.T.ABOOBACKER, AGED 40 YEARS,
S/O.SAIDALAVI, TALIPARAMBA AMSOM,
SAIDNAGAR, TALIPARAMBA TALUK.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: COMPLAINANT AND STATE

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1. STATE REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. STATION HOUSE OFFICER,
(CRIME NO.529/2007 OF TALIPARAMBA
POLICE STATION)
KANNUR DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.6154 of 2007

Dated this the 16th day of October 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered for offences punishable under Sections 3 and 7 of the Essential Commodities Act and under the Kerosene Control Order. The crux of the allegations is that on receipt of discreet prior information that illicit sale of ration kerosene was taking place in the shop of the petitioner, the police reached the scene of the crime and found in the shop of the petitioner a large quantity of ration kerosene - to the tune of 1470 litres. Seizure was effected under a mahazer, F.I.R was registered. One person was allegedly seen running away from the shop before the police party could reach the shop and arrest him. It is now alleged that the petitioner was the one who was running the shop and he was the one who ran away from the premises. The alleged incident took place on 21/8/2007. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has nothing to do with the shop. No ration kerosene has been seized from the premises of the petitioner also. Merely on suspicion, allegations are now being raised against the petitioner. The petitioner may be granted anticipatory bail in these circumstances, it is prayed.

3. The learned Public Prosecutor opposes the application. The search was conducted only because prior information was received about the culpable activity going on in the premises of the petitioner. The landlord has been questioned. Neighbouring witnesses have been questioned. All the available indications point convincingly to the guilt of the petitioner. There is no allegation even of any mala fides. In these circumstances, anticipatory bail may not be granted to the petitioner, it is submitted.

4. I find merit in the opposition by the learned Public Prosecutor. The case diary has been perused by me. I shall avoid any detailed discussion on the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I find no merit in the contention that the allegations

are false. I do not find any circumstance which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007